Shell MDS (M) Sdn Bhd v Petroliam Nasional Bhd (Petronas) & Anor

HIGH COURT (KUALA LUMPUR) — SUIT NO WA-24NCVC-4367–11 OF 2024
ARZIAH MOHAMED APANDI JC
6 JANUARY 2025

Civil Procedure — Injunction — Competing claims from Petronas and Petros on payment for natural gas supply — Interpleader proceeding to maintain status quo before the determination of the issue between Petronas and Petros — Whether there was exceptional and extremely rare cases in granting the injunction — Whether there was elements of bad intention or bad faith — Whether the balance of convenience existed — Whether the payments should be put into stakeholder's account pending the determination of the main action — Whether the status quo must be maintained — Whether the undertaking to maintain supply could determine the injunction application — Whether the injuction should be granted — Petroleum Development Act 1974 (PDA 1974) s 2 & Distribution of Gas Ordinance 2016 (DGO 2016) s 11A

This was an application ('encl 3') by Shell MDS (M) Sdn Bhd ('SMDS') for an interim injunction in the interpleader proceedings. Enclosure 3 became urgent as the matter involve competing claims from Petronas and Petros on SMDS's payment for natural gas supply. SMDS faced immediate risks and threats of disruption to its gas supply under two competing gas supply agreements ('GSA') ie the Petronas-GSA dated 17 July 2020 ('Petronas-GSA') and the Petros-GSA dated 16 August 2024 ('Petros-GSA'). Article 17.1(c) of the Petronas-GSA puts SMDS to a 14 November 2024 deadline to top up its bank guarantee, failing which Petronas had the right to terminate the agreement. Article 11.11 permitted Petronas to suspend gas supply with seven days' notice, which could be issued at any time. The financial implications were substantial, with monthly payments in the region of RM70–100m. SMDS risked paying twice for the same gas supply and facing potential disruption to its operations in Bintulu if it was suspended, with negative consequences on its bank guarantee facilities. SMDS had attempted to mitigate the situation by offering to set aside payments in an interest-bearing account pending resolution. Still, Petronas had proceeded to call on the bank guarantee. The competing legislative frameworks was the heart of the dispute. At the federal level, the Petroleum Development Act 1974 ('the PDA 1974') granted Petronas exclusive rights over petroleum operations nationwide. At the state level, the Distribution of Gas Ordinance 2016 ('the DGO 2016') and its 2023 amendment established Petros as the sole gas aggregator in Sarawak. There was the fundamental tension between federal and state authorities that

underlies the dispute. The encl 3 sought to preserve the status quo by restraining both defendants from disrupting the gas supply or enforcing payment demands until the court can determine the rightful recipient of payment under the interpleader proceedings. The issues for determination were: (a) whether there was exceptional and extremely rare cases in granting the injunction; (b) whether there was elements of bad intention or bad faith; (c) whether the balance of convenience existed; (d) whether the payments should be put into stakeholder's account pending the determination of the main action; (e) whether the status quo must be maintained; (f) whether the undertaking to maintain supply could determine the injunction application; (g) whether the injunction should be granted.

Held, allowing the reliefs in encl 3 with costs in cause:

(1) The court was of the view that where the grant of interim or interlocutory mandatory injunctions should be granted only in exceptional and extremely rare cases. SMDS wanted to fulfil all its obligations under the Petronas-GSA and later the Petros-GSA to ensure its supply of gas remained uninterrupted. SMDS could not dictate Petronas or Petros's interests as SMDS was not part of the ongoing turmoil. Therefore, SMDS had an exceptionally and unusually strong and clear case for the court to rely on equity to look to the substance and intent of the application and not to the form. It was no fault of SMDS that the tussle between Petronas and Petros had come about. SMDS was willing and able to make payments to the correct entity as determined by the court. This was evidenced by its actions in setting aside funds and seeking court intervention to resolve the payment dispute (see paras 32, 34 & 36).

(2) There were no elements of bad intention or bad faith by SMDS making the interpleader action. What necessitates this injunction application was a determination of who SMDS should pay for its gas supply. SMDS portrayed itself as a law-abiding entity trying to fulfil all its obligations under the two GSAs (see para 38).

(3) SMDS's responsibility to pay for gas received would persist regardless of any questions about the validity of the agreement. SMDS was able and willing to pay for the gas supply. It had fulfilled the test set out in *Keet Gerald Francis Noel John v Mohd Noor Abdullah* as both Petronas and Petros acknowledged there were serious issues to be tried in their respective positions and legal actions. The balance of convenience favoured the granting of injunction as it would prevent irreparable harm to SMDS while maintaining the status quo and preventing double payment and potential breach of laws while protecting the interests of all parties (see paras 40–41).

(4) There was no issue of SMDS trying to evade payments while receiving the gas supply. It was never been SMDS's contention. Its willingness to

pay was put across in its relief in the application. Furthermore, given the circumstances, it would be unconscionable for Petronas or Petros to call on bank guarantees or require new ones. This was particularly true given that Petronas was aware of the DGO 2016's enactment and Petros's designation as a gas aggregator yet did not object to SMDS executing the Petros-GSA when initially informed. Here, SMDS sought to restrain the beneficiary rather than the bank, invoking this court's broader discretion to prevent unconscionable conduct. The ability of SMDS to make payments was not disputed as the payments are ready but pending the determination of the rightful beneficiary. As such, SMDS should not be denied its rights to the gas supply by being stuck in between two tall competing giants (see paras 44–46).

(5) The status quo must account for all intervening events, including the DGO 2016 implementation, Petros's appointment, and the MUTS directive. It could not simply revert to the pre-Petros-GSA situation, as Petronas suggestted. Status quo refers to the state of affairs immediately preceding the disputed action. That would be the arrangement before SMDS signed the Petros-GSA, characterised by the regular gas supply from Petronas to SMDS. Petronas argued that the injunction sought would artificially fragment this integrated commercial arrangement, requiring Petronas to maintain supply while suspending its right to payment. This would represent a significant departure from, rather than preservation of the status quo. Following *Garden Cottage Foods Ltd v Milk Marketing Board* (1984) AC 130, the court must consider the public interest in maintaining essential services. SMDS had demonstrated a willingness to set aside payment, mitigating any financial prejudice to Petronas (see paras 50–51).

(6) Petros's undertaking to maintain supply did not give much weight as Petros lacked physical supply capability. Petros had no actual costs or obligations for Petros. Petros appeared limited to attempting to collect payments and the undertaking did not address Petronas's interests. The undertaking did not have any influence on determining the injunction application (see para 52).

(7) The court was of the view that the evidence shown serious issues to be tried, and the balance of convenience lies in favour of SMDS. The requested injunction would maintain the status quo and prevent disruption to the natural gas supply, which was crucial for SMDS's operations, double payment of substantial monthly sums which would cause significant financial hardship, potential breaches of law due to the unresolved issues between Petronas and Petros and also prejudice to SMDS as an innocent party caught between competing claims. These arrangements were interim and subject to modification if circumstances change or if parties reach an agreement through governmental channels.

The granting of this injunction would preserve the position of all parties pending the final determination of the substantive issues while ensuring that SMDS can continue its operations without prejudice to either Petronas or Petros's ultimate rights as determined by the court (see paras 55–57).

[Bahasa Malaysia summary

Ini adalah permohonan ('lampiran 3') oleh Shell MDS (M) Sdn Bhd ('SMDS') untuk injunksi interim dalam prosiding interpleader. Lampiran 3 perlu didengar segera kerana perkara itu melibatkan pertikaian antara Petronas dan Petros mengenai pembayaran SMDS untuk bekalan gas asli. SMDS menghadapi risiko serta-merta dan ancaman gangguan kepada bekalan gasnya di bawah dua perjanjian bekalan gas yang berlainan ('PBG') iaitu Petronas-PBG bertarikh 17 Julai 2020 ('Petronas-PBG') dan Petros-PBG bertarikh 16 Ogos 2024 ('Petros-PBG'). Perkara 17.1(c) Petronas-PBG meletakkan SMDS pada tarikh akhir 14 November 2024 untuk memberikan jaminan banknya, sekiranya gagal Petronas mempunyai hak untuk menamatkan perjanjian itu. Perkara 11.11 membenarkan Petronas menggantung bekalan gas dengan notis tujuh hari yang boleh diberikan pada bila-bila masa. Implikasi kewangan adalah besar dengan bayaran bulanan sekitar RM70–100 juta. SMDS berisiko untuk membayar dua kali untuk bekalan gas yang sama dan menghadapi potensi gangguan kepada operasinya di Bintulu sekiranya digantung dengan kesan negatif ke atas kemudahan jaminan banknya. SMDS telah cuba memperbaiki keadaan dengan menawarkan untuk mengenepikan pembayaran dalam akaun berfaedah sementara menunggu penyelesaian. Namun, Petronas telah meneruskan untuk meminta jaminan bank. Di dalam kes ini, bidangkuasa perundangan yang bercanggah adalah perkara asas pertikaian. Di peringkat persekutuan, Akta Pembangunan Petroleum 1974 ('APP 1974') memberikan hak eksklusif kepada Petronas ke atas operasi petroleum di seluruh negara. Di peringkat negeri, Ordinan Pengagihan Gas 2016 ('OPG 2016') dan pindaan 2023 menjadikan Petros sebagai satu-satunya pengumpul gas di Sarawak. Terdapat pertikaian antara kerajaan persekutuan dan negeri atas pertikaian tersebut. Lamp 3 adalah untuk mengekalkan status quo dengan menghalang kedua-dua defendan daripada mengganggu bekalan gas atau menguatkuasakan tuntutan pembayaran sehingga mahkamah dapat menentukan penerima pembayaran yang sah di bawah prosiding interpleader. Isu-isu untuk penentuan ialah: (a) sama ada terdapat kes luar biasa dan sangat jarang berlaku dalam membenarkan injunksi; (b) sama ada terdapat unsur niat buruk; (c) sama ada keseimbangan kemudahan wujud; (d) sama ada pembayaran perlu dimasukkan ke dalam akaun pihak berkepentingan sementara menunggu penentuan tindakan utama; (e) sama ada status quo harus dikekalkan; (f) sama ada akujanji untuk mengekalkan bekalan boleh menentukan permohonan injunksi; (g) sama ada injunksi harus dibenarkan.

Diputuskan, membenarkan relif-relif di dalam lampiran 3 dengan kos di dalam kausa: A

(1) Mahkamah berpandangan bahawa apabila pemberian injunksi mandatori interim atau interlokutori diberikan hanya dalam kes-kes yang luar biasa dan sangat jarang berlaku. SMDS mahu memenuhi semua kewajipannya di bawah Petronas-PBG dan kemudian Petros-PBG untuk memastikan bekalan gasnya kekal tidak terganggu. SMDS tidak dapat menentukan kepentingan Petronas atau Petros kerana SMDS bukanlah sebahagian daripada pertikaian tersebut. Oleh itu, SMDS mempunyai kes yang sangat kuat dan jelas bagi mahkamah untuk bertindak atas ekuiti dengan melihat kepada intipati dan niat permohonan dan bukan kepada bentuknya. SMDS merupakan pihak yang tidak bersalah atas pertikaian antara Petronas dan Petros. SMDS bersedia dan mampu membuat pembayaran kepada entiti yang betul seperti yang ditentukan oleh mahkamah. Hal ini terbukti dengan tindakannya dalam mengenepikan wang yang patut dibayar dan mendapatkan perintah mahkamah untuk menyelesaikan pertikaian pembayaran (lihat perenggan 32, 34 & 36). B C D

(2) Tiada unsur niat buruk oleh SMDS yang memfailkan tindakan interpleader ini. Permohonan injunksi ini adalah untuk menentukan siapa yang perlu dibayar oleh SMDS untuk bekalan gasnya. SMDS menggambarkan dirinya sebagai entiti yang mematuhi undang-undang yang cuba memenuhi semua kewajipannya di bawah kedua-dua PBG (lihat perenggan 38). E F

(3) Tanggungjawab SMDS untuk membayar gas yang diterima akan berterusan tanpa mengira sebarang persoalan mengenai kesahihan perjanjian itu. SMDS mampu dan bersedia membayar bekalan gas. Ujian dalam kes *Keet Gerald Francis Noel John lwn Mohd Noor Abdullah* telah dipenuhi kerana kedua-dua Petronas dan Petros mengakui terdapat isu serius yang perlu dibicarakan dalam kedudukan dan tindakan undang-undang masing-masing. Keseimbangan kemudahan memihak kepada pemberian injunksi kerana ianya akan menghalang kemudaratan yang tidak boleh diperbaiki kepada SMDS sambil mengekalkan status quo dan mencegah pembayaran berganda dan potensi pelanggaran undang-undang sambil melindungi kepentingan semua pihak (lihat perenggan 40–41). G H

(4) SMDS tidak cuba mengelak pembayaran semasa menerima bekalan gas. Ianya juga tidak pernah menjadi pertikaian SMDS. Kesediaannya untuk membayar telah diletakkan dalam relifnya dalam permohonan itu. Tambahan pula, melihat kepada keadaan kes, adalah tidak wajar bagi Petronas atau Petros untuk memanggil jaminan bank atau memerlukan yang jaminan baharu. Hal ini memandangkan Petronas menyedari penggubalan DGO 2016 dan peranan Petros sebagai pengumpul gas I

namun tidak membantah SMDS melaksanakan Petros-PBG apabila diberitahu pada mulanya. Di sini, SMDS berusaha untuk menghalang penerima bayaran dan bukannya bank, menggunakan budi bicara mahkamah yang lebih luas untuk mencegah tindakan yang tidak masuk akal. Keupayaan SMDS untuk membuat pembayaran tidak dipertikaikan kerana proses pembayarannya telah lengkap sementara menunggu penentuan penerima bayaran yang sah. Oleh itu, SMDS tidak boleh dinafikan haknya ke atas bekalan gas dengan terperangkap di antara dua syarikat gergasi yang mempunyai pertikaian (lihat perenggan 44–46).

(5) Status quo haruslah mengambil kira semua peristiwa, termasuk pelaksanaan DGO 2016, pelantikan Petros, dan arahan MUTS. Ianya tidak boleh kembali kepada situasi sebelum Petros-PBG seperti yang dihujahkan oleh Petronas. Status quo merujuk kepada keadaan sejurus sebelum tindakan yang dipertikaikan. Hal itu merupakan proses sebelum SMDS menandatangani Petros-PBG, melalui gas yang dibekalkan secara tetap dari Petronas ke SMDS. Petronas berhujah bahawa injunksi yang dipohonkan akan memecah-belahkan aturan komersial ini dan memerlukan Petronas mengekalkan bekalan sambil menggantung hak pembayarannya. Hal ini bercanggah dengan pemeliharaan status quo. Menurut kes *Garden Cottage Foods Ltd v Milk Marketing Board* (1984) AC 130, mahkamah haruslah mempertimbangkan kepentingan awam dalam mengekalkan perkhidmatan penting. SMDS telah menunjukkan kesediaan untuk mengenepikan pembayaran, mengurangkan sebarang akibat kewangan kepada Petronas (lihat perenggan 50–51).

(6) Akujanji Petros untuk mengekalkan bekalan tidak membantu kerana Petros tidak mempunyai keupayaan bekalan fizikal. Petros tidak mempunyai kos atau kewajipan sebenar untuk Petros. Petros mencuba untuk mendapatkan bayaran dan akujanji itu tidak menangani kepentingan Petronas. Akujanji itu tidak membantu dalam menentukan permohonan injunksi tersebut (lihat perenggan 52).

(7) Mahkamah berpandangan bahawa berdasarkan keterangan, telah menunjukkan isu-isu serius yang perlu dibicarakan dan keseimbangan kemudahan memihak kepada SMDS. Injunksi tersebut akan mengekalkan status quo dan mengelakkan gangguan kepada bekalan gas asli yang penting untuk operasi SMDS. Pembayaran sebanyak dua kali ganda terhadap jumlah bulanan yang besar yang akan menyebabkan kesulitan kewangan yang ketara dan potensi pelanggaran undang-undang kerana isu yang tidak dapat diselesaikan antara Petronas dan Petros. Ianya juga memprejudiskan SMDS sebagai pihak yang tidak bersalah yang terperangkap di antara pertikaian tersebut. Tindakan ini adalah bersifat sementara dan tertakluk kepada perkembangan kes atau sekiranya pihak-pihak mencapai persetujuan melalui saluran kerajaan.

Pemberian injunksi ini akan mengekalkan kedudukan semua pihak sementara menunggu penentuan isu-isu substantif secara muktamad sambil memastikan bahawa SMDS boleh meneruskan operasinya tanpa menjejaskan hak utama Petronas atau Petros untuk ditentukan oleh mahkamah (lihat perenggan 55–57).]

Cases referred to

American Cyanamid Co v Ethicon Ltd [1975] AC 396, HL (refd)
Dunhill (Alfred) Limited v Sunoptic SA and C Dunhill [1979] FSR 337, CA (folld)
Garden Cottage Foods Ltd v Milk Marketing Board [1984] AC 130, HL (folld)
Karuppannan v Balakrishnen (Chong Lee Chin & Ors, third parties) [1994] 3 MLJ 584, FC (refd)
Keet Gerald Francis Noel John v Mohd Noor bin Abdullah & Ors [1995] 1 MLJ 193, CA (folld)
La Kaffa International Co Ltd v Loob Holding Sdn Bhd and another appeal [2018] MLJU 703, CA (refd)
Law Pang Ching & Ors v Tawau Municipal Council [2002] 3 MLJ 326, HC (refd)
Pekeliling Triangle Sdn Bhd & Anor v Chase Perdana Bhd [2003] 1 MLJ 130, CA (refd)
Sivaperuman v Heah Seok Yeong Realty Sdn Bhd [1979] 1 MLJ 150, FC (refd)
Sumatec Engineering & Construction Sdn Bhd v Malaysian Refining Co Sdn Bhd [2012] 4 MLJ 1, FC (folld)
TR Hamzah & Yeang Sdn Bhd v Lazar Sdn Bhd [1985] 2 MLJ 45, FC (folld)
Tan Chee Hoe & Sdn Bhd v Code Focus Sdn Bhd [2014] 3 MLJ 301, FC (refd)

Legislation referred to

Contracts Act 1950 s 66
Courts of Judicature Act 1964 s 25
Distribution of Gas Ordinance 2016 (Cap 72) s 11A
Petroleum Development Act 1974 s 2
Rules of Court 2012 O 17 r 1(1)(a), O 29
Specific Relief Act 1950 ss 50, 51

Christopher Leong Sau Foo (with Janet Chai Pei Ying) (Chooi & Company) for the plaintiff.
Azian bt Mohd Aziz (with Ahmad Faiz bin Razali, Khoo Yuan Ping, Khoon Jiun Yuet) (Mohamad Hanafiah Zakaria) for the first defendant.
Foo Joon Liang (with Kho Jia Yuan) (Gan Partnership) for the second defendant.

Arziah Mohamed Apandi JC:

Gajah berjuang sama gajah, pelanduk mati di tengah-tengah.

A

INTRODUCTION

[1] This urgent application (encl 3) by Shell MDS (M) Sdn Bhd ('SMDS') for an interim injunction in the interpleader proceedings (encl 1) under O 17 r 1(1)(a) of the Rules of Court 2012 ('the ROC 2012'), which provides:

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> Where a person is under liability in respect of a debt or in respect of any money, goods or chattels and he is, or expects to be sued for or in respect of that debt or money or those goods or chattels by two or more persons making adverse claims thereto.

C

[2] Enclosure 3 becomes urgent as the matter involve competing claims from Petronas and Petros on SMDS's payment for natural gas supply. SMDS faces immediate risks and threats of disruption to its gas supply under two competing gas supply agreements ('GSA') ie the Petronas-GSA dated 17 July 2020 ('Petronas-GSA') and the Petros-GSA dated 16 August 2024 ('Petros-GSA'). Article 17.1(c) of the Petronas-GSA puts SMDS to a 14 November 2024 deadline to top up its bank guarantee, failing which Petronas has the right to terminate the agreement. Article 11.11 permits Petronas to suspend gas supply with seven days' notice, which can be issued at any time. The financial implications are substantial, with monthly payments in the region of RM70–100m. SMDS risks paying twice for the same gas supply and facing potential disruption to its operations in Bintulu if it is suspended, with negative consequences on its bank guarantee facilities. SMDS has attempted to mitigate the situation by offering to set aside payments in an interest-bearing account pending resolution. Still, Petronas has proceeded to call on the bank guarantee.

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[3] It begins with the execution of the Petronas-GSA in July 2020, followed by Petros's designation as the sole gas aggregator in February 2024, and culminating in the signing of the Petros-GSA in August 2024. The competing legislative frameworks is the heart of the dispute. At the federal level, the Petroleum Development Act 1974 ('the PDA 1974') grants Petronas exclusive rights over petroleum operations nationwide. At the state level, the Distribution of Gas Ordinance 2016 ('the DGO 2016') and its 2023 amendment establish Petros as the sole gas aggregator in Sarawak. This section highlights the fundamental tension between federal and state authorities that underlies the dispute. Under s 2 of the PDA 1974 it states that:

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> The entire ownership in, and the exclusive rights, powers, liberties and privileges of exploring, exploiting, winning and obtaining petroleum whether onshore or offshore of Malaysia shall be vested in a Corporation to be incorporated under the Companies Act 1965.

I

[4] Under s 11A DGO 2016 it states that:

(1) The Minister may, by notification in the Gazette, designate any person to be a gas aggregator for the purposes of this Ordinance.

(2) A gas aggregator shall be the only person authorized to aggregate natural gas from various sources for distribution to consumers in the State.

[5] Parties came before me after their initial hearing before YA Hayatul Akmal bt Abdul Aziz on 19 December 2024. That day, SMDS made its oral submissions extensively but did not file written submissions. When Petronas sought leave to file submissions SMDS's oral submissions, SMDS objected and insisted that Petronas submit orally. This procedural impasse led YA Hayatul Akmal to direct all parties to file submissions and schedule a new hearing date before me on 6 January 2025. Her Ladyship then granted an ad-interim order of encl 3 until the hearing of encl 3. What had also transpired on that day was Petros undertook to maintain the gas supply to SMDS. This undertaking, formalised in Petros' letter filed with the court after the hearing, affects the necessity and appropriateness of the requested injunctive relief. With the undertaking, SMDS and Petronas argued before me, with Petros clarifying some inaccurate information about Petros's standing in the dispute.

[6] The encl 3 application seeks to preserve the status quo by restraining both defendants from disrupting the gas supply or enforcing payment demands until the court can determine the rightful recipient of payment under the interpleader proceedings.

BASIS FOR INTERIM RELIEF

[7] The court's jurisdiction derives from s 25 of the Courts of Judicature Act 1964, which provides:

Subject to the limitations contained in Article 128 of the Constitution the High Court shall have jurisdiction to try all civil proceedings where —

(a) the cause of action arose;

(b) the defendant or one of several defendants resides or has his place of business ...

[8] The power to grant injunctive relief stems from ss 50 and 51 of the Specific Relief Act 1950:

Preventive relief is granted at the discretion of the Court by injunction, temporary or perpetual.

Temporary injunctions are such as are to continue until a specified time, or until the further order of the Court.

[9] Order 29 of the ROC 2012 empowers the court to grant interlocutory

injunctions for the preservation of property and rights.

[10] The test for interim injunction is established in *American Cyanamid Co v Ethicon Ltd* [1975] AC 396, as applied in Malaysian law through *Keet Gerald Francis Noel John v Mohd Noor bin Abdullah & Ors* [1995] 1 MLJ 193 (CA) that requires consideration of serious issues to be tried, adequacy of damages and balance of convenience.

Analysis of SMDS's prayers

[11] SMDS's first prayer seeks an order to maintain the status quo and prevent Petronas dan Petros from taking any steps that would interrupt natural gas's continuous supply and delivery to SMDS at Tanjung Kidurong, Bintulu, Sarawak. It extends to restraining both defendants from exercising any rights to threaten, issue, or commence legal proceedings or enforcing rights under their respective GSAs. Couched in prohibitory terms, it seeks a mandatory injunction requiring Petronas to continue gas supply without receiving payment.

[12] The second and third prayers concern the UOB Bank guarantee. SMDS seeks to restrain Petronas from making calls on the guarantee, accepting or utilising its proceeds and requests a refund of proceeds already received.

[13] The fourth prayer requests permission to set aside future payments in interest-bearing accounts or pay them into court. This prayer effectively seeks to unilaterally modify clear contractual payment obligations while continuing to receive the benefit of gas supply.

[14] Petronas argues that damages are an adequate remedy and that SMDS created its predicament by signing with Petros the Petros-DGA while having an existing Petronas-DGA. They contend that the balance of convenience favours Petronas as they continue to incur significant costs (approximately RM2 billion in unpaid supplies) while SMDS profits from the gas supply. Petronas emphasises that they are the only party physically capable of supplying gas and have ongoing commitments to upstream producers that require substantial financial outlay. They argue that SMDS cannot 'have its cake and eat it' by receiving gas while withholding payment. Petronas also maintains that the status quo is to be considered before SMDS signs the Petros-GSA. Petros's undertaking is self-serving since they cannot physically supply gas.

[15] SMDS argues that it is not merely about damages but also fundamental legal validity and compliance issues. SMDS says dispute is between Petronas and Petros regarding the validity and precedence of the PDA 1974 versus the DGO 2016. SMDS emphasises that paying either party without court

determination could expose them to criminal liability under the DGO 2016. It was highlighted that Petronas knew but did not object to SMDS being required to execute the Petros-GSA, and that the Prime Minister and Sarawak Premier had announced that parties would respect both the PDA 1974 and DGO 2016. SMDS maintains that they are caught in a federal-state jurisdictional dispute and are willing to pay as directed by the court, having already set aside funds for this purpose.

[16] Petros argues that the DGO 2016 has superseded the PDA 1974, and they are the sole legally designated gas aggregator in Sarawak. They contend that Petronas is not designated as a gas aggregator and cannot lawfully undertake relevant activities in Sarawak. Petros has provided an undertaking to maintain gas supply, though they acknowledge they cannot physically supply it. They argue that continuing to perform the Petronas-GSA would further an illegal agreement under Sarawak state law.

[17] Following *Keet Gerald Francis,* this court, must refrain from making any determination on the merits of the claim or any defence to it; consider where the justice of the case lies and have in his forefront mind that the remedy asked is intended to give a just result for the period between the date of application and trial proper and intended to maintain status quo. In determining where the balance of convenience lies, this court weighs the harm in granting the injunction with the harm that would result if denied. In *Pekeliling Triangle Sdn Bhd & Anor v Chase Perdana Bhd* [2003] 1 MLJ 130 (CA) the steps that must be considered under the balance of convenience before an injunction is granted. An interlocutory injunction ought to be granted to maintain the status quo of the matter (following *Keet Gerald Francis*).

Legal framework and competing claims

[18] Under the PDA 1974, Petronas holds exclusive rights regarding petroleum (including natural gas) in Malaysia, including Sarawak. This federal legislation has historically provided the framework for natural gas supply arrangements throughout Malaysia. Under these rights, SMDS and Petronas executed the Petronas-GSA on 17 July 2020 for natural gas supply and delivery from 1 January 2020 to 31 December 2026.

[19] Then, the State Legislative Assembly of Sarawak enacted the Distribution of Gas Ordinance 2016 ('the DGO 2016'), which came into force on 1 July 2018. The DGO 2016 was subsequently amended by an Amendment Ordinance 2023 to provide for the designation and role of a 'gas aggregator', which came into effect on 1 February 2024. Under the amended DGO 2016, only an entity designated as a gas aggregator is permitted in law to 'aggregate', supply, and distribute natural gas in Sarawak. Following suit, on 1 February

2024, Petros was designated as the sole gas aggregator for Sarawak under the DGO 2016. Petros said this designation was merely a statutory recognition of what Petronas had allegedly acknowledged since 2019. The designation makes Petros the only entity legally entitled to operate as a gas aggregator in Sarawak, directly conflicting with Petronas's federal rights.

The nature of the dispute

[20] The fundamental dispute transcends beyond mere monetary considerations. Constitutional and statutory validity must be determined where intricate questions regarding federal and state legislation interplay mainly on the validity and territorial scope of the PDA 1974 on natural gas operations in Sarawak. The other issue is the constitutional validity and effect of the DGO 2016 on the legal status of Petros's designation as the sole gas aggregator in Sarawak. Regulatory compliance and criminal liability as the DGO 2016 impose criminal penalties including imprisonment and fines for unauthorised gas aggregation activities. Company officers face personal liability risks under the regulatory regime. The mere payment to an unauthorised entity could potentially constitute a criminal offence.

Relationship between the PDA 1974 and the DGO 2016

[21] The central question involves the relationship between federal and state legislation as the PDA 1974 establishes Petronas's historical role in petroleum operations nationwide and the DGO 2016 creates a new regulatory framework specific to Sarawak in establishing a licensing regime for gas aggregators, designating Petros as the sole authorised aggregator and imposing criminal penalties for unauthorised operations. The interaction between these frameworks raises complex constitutional questions that require judicial determination.

[22] SMDS was incorporated as a joint venture company with shareholding distributed among Shell Gas Holdings (M) Ltd (72%), Diamond Gas Holdings Sdn Bhd (a Mitsubishi Corp affiliate) (14%), Petroleum Nasional Bhd (7%), and the Sarawak State Government via the State Financial Secretary of Sarawak (7%). The company's primary business involves purchasing natural gas, processing it using Shell's Gas to Liquid (GTL) technology, and marketing the resulting GTL products. As a downstream processor, SMDS relies on a consistent gas supply.

[23] Petronas is wholly owned by the Federal Government of Malaysia through the Federal Lands Commissioner (0.01%) and the Minister of Finance (Inc) (99.99%). Under the Petroleum Development Act 1974, Petronas has exclusive rights regarding petroleum matters in Malaysia. The Sarawak State

Government wholly owns Petros through the State Financial Secretary of Sarawak and has been designated as the sole gas aggregator for Sarawak under recent state legislation.

[24] The factual matrix underlying this dispute centres on overlapping GSA and competing claims for payment. SMDS first entered the Petronas-GSA on 17 July 2020, under which Petronas was to supply and deliver natural gas from 1 January 2021 to 31 December 2026. Subsequently, on 16 August 2024, SMDS entered the Petros-GSA from 1 August 2024 to 31 December 2026. It is crucial to note that it remains undisputed that the physical gas supplied under Petronas-GSA and Petros-GSA originates from PETRONAS. This fact was acknowledged in Petronas's letter dated 16 August 2024 and was conceded by SMDS's counsel during the 19 December 2024 hearing. The identical expiration date of the Petronas-GSA and Petros-GSA is 31 December 2026, which suggests a deliberate parallel structure.

The conflict and SMDS's position

[25] The conflict emerged when SMDS received competing demands from both Petronas and Petros, placing it in an impossible position:

(a) SMDS has obligations under the Petronas-GSA. This agreement was entered into when Petronas's exclusive rights under the PDA were unchallenged. All SMDS shareholders, including Petronas and the Sarawak State Government, were aware of this agreement; and

(b) following Petros's designation as sole gas aggregator, on 1 August 2024, SMDS received a letter from the Director of Gas Distribution under the Ministry of Utility and Telecommunications Sarawak (MUTS) directing it to execute a gas sales agreement with Petros by 16 August 2024. This direction came with the force of law, as s 18 of the DGO 2016 mandates compliance with such directions, with s 21 imposing criminal penalties for non-compliance.

The execution of Petros-GSA

[26] SMDS argues that Petronas did not raise any issues regarding the execution of the Petronas-GSA. However, Petronas refutes this and argues that SMDS oversimplifies the chronology of events and misrepresents Petronas's position. The sequence of events reveals that:

(a) on 1 August 2024, Petros initially approached SMDS requesting the signing of a GSA;

(b) SMDS waited until 15 August 2024 — just one day before executing the Petros-GSA — to inform Petronas of their intentions. In their 15 August 2024 letter, SMDS stated they were 'committed to continue the

discussions with MPM on this matter,' while preparing to execute the Petros-GSA the next day; and

(c) Malaysia Petroleum Management (MPM), a division within Petronas, has served as the custodian, manager, and regulator of Malaysia's petroleum resources since Petronas was established in 1974.

[27] Petronas claimed this chronology demonstrates that SMDS deliberately timed their notification to Petronas to preclude any meaningful response or discussion. The timing suggests a calculated strategy rather than a genuine attempt at consultation.

[28] The situation became critical when Petronas and Petros issued invoices for the same natural gas supply. For August 2024, SMDS received invoices of approximately RM80m from each entity, and similar duplicate invoicing continued for September 2024. The situation escalated when Petronas called on SMDS's bank guarantee for the August invoice, forcing SMDS to remit approximately RM80m to UOB Bank.

Understanding the DGO 2016 and its licensing requirements

[29] Petronas argued that SMDS's assertion that 'it is an offence under the DGO 2016 if unlicensed' appears deliberately crafted to cast Petronas in a bad light. SMDS avoids the issue of whether Petronas must be licensed under the DGO 2016. SMDS asserted without attributing any need for Petronas to be licensed under the DGO 2016 because they know Petronas' position is not required to be licensed under the DGO 2016 by its status under the PDA 1974. After all, SMDS executed the Petronas-GSA explicitly under the PDA 1974 as referred to in its preamble (see encl 2 exh 'SMDS4' of SMDS's supporting affidavit).

Legal principles and arguments

[30] In support of its interim relief in encl 3, SMDS relied on these reasons:

(a) Petronas and Petros have genuine competing claims regarding the same subject matter to supply natural gas and receive payment for the supply in Sarawak. These claims arise from conflicting federal and state legislation, creating a complex constitutional issue requiring judicial determination;

(b) SMDS has no personal interest in the underlying dispute between Petronas and Petros on who owns or has the rights to supply natural gas in Sarawak. SMDS's only interest is ensuring it pays the correct entity and maintains an uninterrupted gas supply; and

(c) there is no collusion between SMDS and any other parties. SMDS has

consistently acted transparently, informed Petronas and Petros of its actions and seek joint payment instructions. SMDS has also set aside disputed payments in interest-bearing accounts pending resolution.

[31] Petronas, in objecting, raised these issues, which this court address as follows:

(a) it fails to meet the high threshold required for mandatory injunctions;

(b) there are no exceptional circumstances to justify such extraordinary relief;

(c) damages do provide an adequate remedy;

(d) the balance of convenience strongly favours Petronas; and

(e) the requested relief would inappropriately alter rather than preserve the status quo.

Nature of the injunction

[32] While SMDS attempted to frame its relief in prohibitory terms, the substance of the application reveals its true mandatory nature. The law is trite where the grant of interim or interlocutory mandatory injunctions are granted only in exceptional and extremely rare cases (*Sivaperuman v Heah Seok Yeong Realty Sdn Bhd* [1979] 1 MLJ 150 (FC); *Karuppannan v Balakrishnen (Chong Lee Chin & Ors, third parties)* [1994] 3 MLJ 584 (FC)). The threshold is significantly higher than that required for prohibitory injunctions. In *La Kaffa International Co Ltd v Loob Holding Sdn Bhd and another appeal* [2018] MLJU 703 (CA) this principle is reinforced by requiring an 'unusually strong and clear case' against the defendant. This heightened standard reflects the courts' recognition that mandatory injunctions fundamentally alter, rather than preserve, the status quo.

[33] Petronas submits that no exceptional circumstances in this case would justify the extraordinary remedy of a mandatory injunction. The current situation arose entirely from SMDS's voluntary decision to enter the Petros-GSA while fully aware of its obligations under the Petronas-GSA. SMDS knew or should have known that Petros lacked the physical capability to supply gas, yet proceeded with the agreement anyway. The broader constitutional and regulatory issues between Petronas and Petros (involving federal and state governments) are distinct from the straightforward contractual relationship between SMDS and Petronas. Petros's undertaking provides SMDS with the security it seeks regarding continuous supply, negating any claim for exceptional circumstances.

[34] With due respect, I cannot agree. SMDS did not bring itself to be caught in this turmoil. SMDS wanted to fulfil all its obligations under the

Petronas-GSA and later the Petros-GSA to ensure its supply of gas remained uninterrupted. SMDS cannot dictate Petronas or Petros's interests as SMDS is not part of the ongoing turmoil. I find that SMDS has an exceptionally and unusually strong and clear case for this court to rely on equity to look to the substance and intent of the application and not to the form (see: *Sivaperuman v Heah*).

The 'impossible position' argument

[35] While SMDS presents this as a straightforward case of conflicting demands, Petronas argues that SMDS had put itself in such position since it was SMDS that chose to enter the Petros-GSA while being fully aware of their obligations under the Petronas-GSA. It was SMDS's own decision to execute a second GSA without adequately resolving its commitments under the first. Such an active role in creating the deadlock position of 'not in a position nor qualified to decide on the contentions' is self-induced.

[36] I reiterate my findings above that it is no fault of SMDS that the tussle between Petronas and Petros had come about. SMDS is willing and able to make payments to the correct entity as determined by the court. This is evidenced by its actions in setting aside funds and seeking court intervention to resolve the payment dispute.

Coming with clean hands

[37] A fundamental principle of equity is that one who seeks equitable relief must come with clean hands. SMDS's conduct raises serious questions about their compliance with this doctrine. *Law Pang Ching & Ors v Tawau Municipal Council* [2002] 3 MLJ 326 (HC) held that equity cannot assist a party who continues to breach their obligations while seeking the court's assistance. On this point, Petronas argues that SMDS appears to be attempting to use an injunction order as a shield to avoid their legal obligation to pay for gas supplied by PETRONAS. This strategy is evident in SMDS continuing to receive and benefit from Petronas's gas supply but seeking to avoid payment while maintaining the benefit of supply. This is inconsistent with basic principles of equity.

[38] I don't find any elements of bad intention or bad faith by SMDS making the interpleader action. What necessitates this injunction application is a determination of who SMDS should pay for its gas supply. SMDS portrayed itself as a law-abiding entity trying to fulfil all its obligations under the two GSAs.

The payment obligations

[39] Section 66 of the Contracts Act 1950 provides clear guidance regarding obligations when agreements are found to be void. Even if SMDS's arguments about the illegality of the Petronas-GSA were accepted (which they are not), several principles would still apply; namely, any party receiving benefits under even a void agreement must make compensation for them. The Federal Court in *Tan Chee Hoe & Sdn Bhd v Code Focus Sdn Bhd* [2014] 3 MLJ 301 (FC) has clarified that this obligation exists regardless of whether the agreement is void from inception or becomes void later. SMDS's responsibility to pay for gas received would persist regardless of any questions about the agreement's validity.

[40] Again, SMDS has been assuring that it is able and willing to pay for the gas supply. One of the reliefs applied is for a designated joint account for SMDS to channel its payments pending the determination of the rightful beneficiary of the payments made in the interpleader proceedings.

[41] From the affidavits, it is clear that SMDS fulfils the test set out in *Keet Gerald Francis Noel John v Mohd Noor bin Abdullah & Ors* [1995] 1 MLJ 193 as both Petronas and Petros acknowledge serious issues to be tried in their respective positions and legal actions. The balance of convenience favours granting the injunction, as it would prevent irreparable harm to SMDS while maintaining the status quo and preventing double payment and potential breach of laws while protecting all parties' interests.

Payment and supply issues

[42] Petronas emphasised on the practical realities of gas supply operations in opposing the injunction. Natural gas supply involves complex upstream operations and agreements with producers, sophisticated processing to meet specifications, extensive infrastructure for delivery, continuous monitoring and quality control and significant ongoing operational costs. These technical requirements demonstrate why Petronas, unlike Petros, actually incurs substantial costs in fulfilling its supply obligations.

[43] Petronas maintains that any interim order maintaining continued supply must include a payment order. SMDS cannot logically argue that Petronas's gas supply is illegal while simultaneously seeking its continuation. By the interpleader proceedings, SMDS effectively acknowledges that the Petronas-GSA's legal position cannot be immediately determined, making any issue of illegality disputable. There is no valid basis for allegations that

Petronas's gas supply is illegal, as the Petronas-GSA was entered into under GSA 1974, and no court has invalidated the application for GSA 1974 in Sarawak.

[44] To me, the interpleader action proves that the parties' positions must be kept in status quo as the parties' positions have yet to be determined. SMDS made the prayer for payments to be put into a stakeholder account. There is no issue of SMDS trying to evade payments while receiving the gas supply. It has never been SMDS's contention. Its willingness to pay is put across in its relief in the application. Furthermore, given the circumstances, it would be unconscionable for Petronas or Petros to call on bank guarantees or require new ones. This is particularly true given that Petronas was aware of the DGO 2016's enactment and Petros's designation as a gas aggregator yet did not object to SMDS executing the Petros-GSA when initially informed.

[45] The treatment of bank guarantees must follow principles established in *Sumatec Engineering & Construction Sdn Bhd v Malaysian Refining Co Sdn Bhd* [2012] 4 MLJ 1 (FC), distinguishing between restraining a bank from payment and restraining a beneficiary from making a call. Here, SMDS seeks to restrain the beneficiary rather than the bank, invoking this court's broader discretion to prevent unconscionable conduct. The ability of SMDS to make payments is not disputed as the payments are ready but pending the determination of the rightful beneficiary.

[46] As such, in echoing the Malay proverb at the start, I find SMDS should not be denied its rights to the gas supply by being stuck in between two tall competing giants. In determining the application for an injunction, I conclude my findings on the legal requirements as below.

Adequacy of damages

[47] A fundamental principle governing injunctive relief is that it should not be granted where damages would provide an adequate remedy. In this case, potential criminal liability exposure to SMDS outweighed the monetary remedies in this case. The interpleader proceedings do not only concern the monetary payment obligations but mainly the statutory compliance of federal-state jurisdictional issues. SMDS's position does not render damages as an enabler to compensate its risk of criminal liability.

Balance of convenience and justice

[48] Petronas argues that the balance tilts to its favour due to the high operational and heavy financial burdens. The financial implications are impactful, with Petronas invoicing SMDS at an average of RM75m monthly.

The commercial reality of SMDS reaping benefits and making profits from the gas supply at the expense of Petronas's infrastructure and expertise also supports Petronas.

[49] The balance favours SMDS because Petronas knew about the catch-22 situation SMDS faces with them and Petros. Petronas's acknowledgement of SMDS executing the Petros-GPA shows Petronas knows about the DGO 2016, including the fact that Petros would be invoicing SMDS for the gas supply. Recent media statements by government officials suggest progress in resolving the underlying dispute. The Prime Minister and Premier have indicated that discussions on gas distribution in Sarawak between Petronas and Petros have been settled, with the government currently fine-tuning details, parameters, and implications. As recently as 21 December 2024, the Prime Minister highlighted the importance of reaching an amicable resolution.

Status quo analysis

[50] Following *Dunhill (Alfred) Limited v Sunoptic SA and C Dunhill* [1979] FSR 337, the court must consider what constitutes the relevant status quo. The status quo must account for all intervening events, including the DGO 2016 implementation, Petros's appointment, and the MUTS directive. It cannot simply revert to the pre-Petros-GSA situation, as Petronas suggests. Status quo refers to the state of affairs immediately preceding the disputed action. That would be the arrangement before SMDS signed the Petros-GSA, characterised by the regular gas supply from Petronas to SMDS. Petronas argued that the injunction sought would artificially fragment this integrated commercial arrangement, requiring Petronas to maintain supply while suspending its right to payment. This would represent a significant departure from, rather than preservation of, the status quo.

[51] I cannot accept Petronas's argument that Petronas faces financial impact. Compared with SMDS, SMDS faces potential criminal liability under the Sarawak state law. Following *Garden Cottage Foods Ltd v Milk Marketing Board* [1984] AC 130, the court must consider the public interest in maintaining essential services. SMDS has demonstrated a willingness to set aside payment, mitigating any financial prejudice to Petronas.

PETROS'S UNDERTAKING

[52] I accept Petronas's argument that Petros's undertaking to maintain supply does not give much weight as Petros lacks physical supply capability. Petros has no actual costs or obligations for Petros. Petros appears limited to attempting to collect payments, and the undertaking does not address Petronas's interests. The undertaking does not have any influence on

A determining the injunction application.

CONCLUSION

B **[53]** In following the Rt Hon Lee Hun Hoe CJ (Borneo) in *TR Hamzah & Yeang Sdn Bhd v Lazar Sdn Bhd* [1985] 2 MLJ 45 (FC) upholding the mandatory injunction by requiring the architectural firm TR Hamzah & Yeang Sdn Bhd that claimed $514,000 in fees for partial services on a 27-storey building project to issue a letter of release despite them not being paid. The ruling established that architects could not withhold release letters as leverage C for fee payment, as fees should be resolved through proper dispute channels. The injunction was warranted despite its exceptional nature on interlocutory applications, as it prevented the architects from effectively holding their client to ransom. The Federal Court also held that reasonable fees for partial services should be determined by courts or arbitration if not agreed upon, and clients D receive an implied license to use plans upon paying reasonable fees.

[54] The dispute in the interpleader proceedings presents three potential paths to resolution through this court's determination of the same with proper E adjudication with appropriate interim protection of all parties' rights while preserving the status quo pending the final determination of the proceedings. The direct resolution through continued negotiations between Petronas and Petros is seen as the fastest with both governments' intervention. But until such resolution materialises, maintaining the status quo with the injunction is F essential to protect all parties' legitimate interests, ensure compliance with applicable laws, prevent irreparable harm and preserve the effectiveness of the final determination of the interpleader proceedings.

[55] The evidence demonstrates serious issues to be tried, and the balance of G convenience lies in favour of SMDS. The requested injunction would maintain the status quo and prevent disruption to the natural gas supply, which is crucial for SMDS's operations, double payment of substantial monthly sums which would cause significant financial hardship, potential breaches of law due to the unresolved issues between Petronas and Petros and also prejudice to SMDS as H an innocent party caught between competing claims.

DECISION

[56] I hereby allow the following reliefs in encl 3, namely prayers 1, 2, 3, 4 I and 5, with costs to be in the cause.

[57] The court emphasises that these arrangements are interim and subject to modification if circumstances change or if parties reach an agreement through governmental channels. The granting of this injunction would

preserve the position of all parties pending the final determination of the substantive issues while ensuring that SMDS can continue its operations without prejudice to either Petronas or Petros's ultimate rights as determined by the court.

Reliefs allowed in encl 3 with costs in cause.

Reported by Muhammad Azham Marwan